

C. Renée Manes
Assistant Federal Public Defender
101 SW Main Street, Suite 1700
Portland, OR 97204
Tel: (503) 326-2123
Fax: (503) 326-5524
Email: Renee_Manes@fd.org
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUY ANH NGUYEN,

Defendant.

CR 3:11-CR-00202–3 MO

**REPLY IN SUPPORT OF THE
MOTION TO AMEND JUDGMENT
TO INCLUDE DESIGNATION
RECOMMENDATION**

Defendant, Huy Anh Nguyen, through his attorney, C. Renée Manes, submits the following reply in support of the Motion to Amend and in response to the Government's opposition.

The Government does not oppose this Court making a non-binding recommendation to the Bureau of Prisons, as authorized by 18 U.S.C. § 3621(b), by means of a letter to that

agency. Such a letter would fully satisfy the request for Mr. Nguyen for a judicial recommendation for the BOP to consider under § 3621(b). The defense did not understand that the Government's stated opposition was only to the amendment of the judgment, rather than the recommendation.

However, although not necessary to this Court's recommendation, Mr. Nguyen disagrees with the Government's interpretation of *United States v. Cebellos*, 671 F.3d 852 (9th Cir. 2011). This Court has the authority to make that recommendation in the form of an amendment to the judgment under *Cebellos*. Further, Mr. Nguyen believes that this Court also has such authority in this case because all of the parties, the Government included, understand that the current judgment will be modified on or some time after July 22, 2013, the date this Court has scheduled for a further hearing on the issue of restitution for all three relevant defendants. *See* Clerk's Record 239 (setting hearing for defendant Tu Tran); Clerk's Record 248 (*id.* as to Minhthy Nguyen), and Clerk's Record 249 (*id.* as to Mr. Nguyen). This Court has issued a place holder order of restitution for all of these parties until the final amount of restitution is decided at that hearing, at which point all three Judgments will likely amended.

The restitution issue is an additional reason for Mr. Nguyen to be housed more closely to his home. The issue on restitution will be the offset for the value of the real property pledged as security, as required by 18 U.S.C. § 3663A(b)(1)(B)(ii). The names on the title of the real property are Mr. Huy Nguyen and his brother Kiet Nguyen. Since December 2011,

counsel for both of the brothers have informed counsel for the Government that they were willing to sign any necessary documents to return title of the property to the appropriate entity – whether Wells Fargo or Academy Mortgage. Counsel for Mr. Nguyen put this fact on the record on April 17, 2013. To date, no documentation has been provided by the Government for Mr. Nguyen to sign. If Mr. Nguyen is in custody, either somewhere in transit or in Texas, on July 22, 2013, it will further delay the signing of any appropriate paperwork.

However, given that all parties are in agreement that this Court may make a non-binding recommendation to the Bureau of Prisons, and in light of the fact that the Government has not opposed Mr. Nguyen's analysis of why such a recommendation would be appropriate in this matter, Mr. Nguyen respectfully requests that this Court issue such a recommendation, if nothing else in the form of a letter such as in the *United States v. Cruz* matter.

RESPECTFULLY SUBMITTED this June 2, 2013.

/s/ C. Renée Manes

C. Renée Manes
Attorney for Defendant